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Federal Communications Commission
Washington, DC 20554
Att: MB Docket 05-311

Gentlemen,


I have been asked by the Windham Cable Advisory Board to respond to your Notice of Proposed Rule Making FCC 05-189. As an overriding comment, we believe that the franchise process has not deterred any entity from installing equipment to provide cable communications or television in our town. Further we believe that removing the requirement for obtaining a franchise to provide would be a major detriment to the town and its citizens.

Windham is a small town of 27.2 square miles just a few miles north of the Massachusetts border. Approximately 14,500 persons live here in ~5,000 dwelling places. We have had two cable television franchises in succession totaling 25 years since the early 1980's. In the most recent award, there were two companies requesting and obtaining franchises. Both franchises have the option of the companies expanding their coverage up to the edges of town. Both franchises included financial support to the town to be used at least partially to enhance the PEG access for the town.

I have provided you comment on the major questions in your Notice in an attachment to this letter. I have tried to use the text of your question to headline the comments we wish to make to that concern.

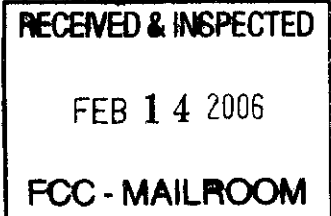
I can be reached at 603-432-8942 or by e-mail at LHART11@aol.com if further comments are required or if the comments provided herein require further elaboration.

Sincerely


Leo A. Hart
Vice Chairman, WCAB

Attachment: Comments to Notice of Proposed Rule Making, FCC 05-189

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Attachment to letter of 2/7/06
Windham, NH Cable Advisory Board
Windham, NH 03087

Comments to Notice of Proposed Rule Making, FCC 05-189

Excerpts of the Notice are given in italics and comments are provided in normal text.

Notice, II Background, 4, pg 4

Based on the evidence in the record taken as a whole, it is clear that there are benefits from competition between two cable systems.

Comment: It should be clear as well that only fair competition benefits the consumer and the public interest. It seems unfair to allow a new provider to avoid the "gates" that the original provider endured. The original provider has invested in these "gates" and the new provider would enjoy an advantage if allowed to bypass them.

Notice, II Background, 6, pg 6, 7

We note that SBC has told investors that Project Lightspeed, an "initiative to expand its fiber-optics network deeper into neighborhoods to deliver SBC U-verseSM TV, voice and high-speed Internet access services," will be deployed to approximately ninety percent of its "high-value," seventy percent of its "medium-value," and less than five percent of its "low-value" customers.

Comment: One of the benefits of a franchise at the local level is that such "red-lining", i.e., "cherry picking" wealthy districts to wire and not wiring lesser, poorer districts, would be prohibited. Only the locals know in detail the characteristics of neighborhoods and can force equal treatment for all consumers.

Notice, III Discussion, 11, pg 7

11. Potential competitive cable providers have alleged that the local franchising process serves as a barrier to entry, and that State and local franchise requirements serve to unreasonably delay competitive entry.

Comment: In our experience, this has not been the case. In our latest re-franchise, the negotiations were handled by the Cable Advisory Board for the LFA, the Selectmen of the town. We met several times with the Cable Provider over a period of about 4 months and worked out a document we were both proud to sign. A second provider at about the same time period took much less time since we used much of the text and concepts of the first negotiation.

Notice, III Discussion, A, 12, pg 8

What is the impact of state-wide franchise authority on the ability of the competitive provider to access the market?

Comment: In New Hampshire, there is no State Franchising Authority, so there is no impact on competitive advantage. However, NH state law does require that a franchise be obtained from the LFA before commencing service.

Notice, III Discussion, A, 13, pg 8

How many negotiations currently are ongoing?

Comment: We currently have two negotiations in the very early stages. Our schedule calls for them to be complete by the time of the current franchise end, August 2008. We have just received requests from the two providers to initiate renewal discussions.

Notice, III Discussions, A, 14, pg 8,9

Some parties state that so-called "level-playing-field" statutes, which typically impose upon new entrants terms and conditions that are neither "more favorable" nor "less burdensome" than those to which existing franchises are subject, to create unreasonable regulatory barriers to entry.

Comment: As we stated above, it seems unfair to allow a newcomer to avoid time and money consuming requirements that were imposed on the original provider.

Notice, III Discussion B, 16, pg 10

The first sentence of Section 621(a)(1) states that a franchising.” We tentatively conclude that Section 621(a)(1) empowers the Commission to ensure that the local franchising process does not unreasonably interfere with the ability of any potential new entrant to provide video programming to consumers. We seek comment on this tentative conclusion.

Comment: The question here revolves around the word “unreasonably”. In Windham, at this very time, Verizon seems to be wiring all parts of the town with fiber optic cables. (Our major franchised cable television provider is Adelphia. Comcast has a smaller franchised footprint.) Verizon has no cable television franchise here. Although no notice of any kind has been provided to town authorities, we anticipate that the bandwidth available when the wiring is finished will be utilized for video to homes. What should be our stance when the *fait accompli* is revealed? Should we insist that a franchise be negotiated before video is delivered? In our opinion, reasonableness should be a two way street.

Notice, III Discussion, B, 17, pg 10

How might the Commission best assure that the local franchising process is not inhibiting the ability of incumbent cable operators to invest in broadband services.

Comment: In our experience, it was at least partially our insistence during re-franchising negotiations that in return for our granting a ten-year term, our provider agreed to significantly upgrade the entire system. Now we are eight years into the franchise, and I think it is clear that the provider is quite happy, i.e. profitable, with the situation. The town certainly is as well. In this case, it was the LFA who pushed the provider into broadband service to our mutual benefit.

Notice, III Discussion, B, 20, pg 11

Further, we tentatively conclude that it is not unreasonable for an LFA, in awarding a franchise, to “assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides;”

Comment: Please see our comment above on page 1 of this attachment concerning "red-lining" and the fact that LFA's are in a much better place to discern such practices.

Notice, III Discussion, B, 20, pg 11

"require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support." These powers and limitations on franchising authorities promote important public policy goals.

Comment: We agree strongly with the need for these requirements to be placed on cable providers. In most instances, these capabilities and requirements vary from town to town and state to state and the LFA is the only reasonable managerial authority to properly control and advocate for these requirements since they are the only ones who know the detailed situation in their town. This argues for LFA's to be the only franchising authorities.

Notice: III Discussion, B, 21, pg 11

What would the appropriate remedy or remedies be for violations of such rules, guidance or best practices? Should the Commission establish specific rules to which LFA's must adhere or specific guidelines for LFA's? For example, should the Commission address maximum timeframes for considering an application for a competitive franchise?

Comment: Our experience shows that rules led to lawsuits to resolve varying interpretations of the rule. Our town would be very averse to the expense of a lawsuit versus a major corporation. We would suggest guidelines be provided. In our last re-franchising negotiations, the time limit of the expiring franchise provided a strong incentive to come to agreement. With respect to the time duration to be "allowed" for a competitive franchise, the time duration should be commensurate with the time it takes to "wire" a complete community. (That took a year or more in our town.) These two actions could be co-terminus and that could set a reasonable duration for negotiations.

Notice, III Discussion, C, 22, pg 11

In addition, we note that it is not clear how the primary justification for a cable franchise— *i.e.*, the locality's need to regulate and receive compensation for the use of public rights of way – applies to entities that already have franchises that authorize their use of those rights of way.

Comment: Although, for example, telephone companies have an approval, although not a franchise, to use the public rights of way, that approval is limited to the provision of telephone service. In just the same way, if I allowed my neighbor to use my pool for swimming, I would not expect him to siphon the pool water out to water his lawn. When a telephone company uses the public rights of way for another purpose such as cable television, it should request such a franchise from the LFA. Please see our concern expressed above with reference to Paragraph 16.

Notice, III Discussions, C, 23, pg 12

We also seek comment on whether build-out requirements are creating unreasonable barriers to entry for facilities-based providers of telephone and/or broadband services. It is our understanding that the areas served by such entities frequently do not coincide perfectly with the areas under the jurisdiction of the relevant LFAs.

Comment: The fact that LFA's of necessity are responsible only for their own area and therefore their franchise authority is limited to that area does not inhibit facility based providers from providing personalized service to a specific area. Current distribution technology uses fiber optic cables to deliver signal to a specific neighborhood. Other neighborhoods are served by other cables. In this way the most detailed and convoluted town lines can be observed with ease. In our own town, each fiber optic cable serves only ten or twenty homes. The head end serving our town also serves several other towns, each with its own services.